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WestJet Forced To Pay Over Refusal To Accommodate Religious Objection To Injection Mandate

Yee v WestJet, 2025 ABCJ 87 (CanLII)

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In the Alberta Court of Justice

Citation: Yee v WestJet, 2025 ABCJ 87

Date: 20250513
Docket: P2390102408
Registry: Calgary

A Calgary Court has now ruled that WestJet improperly terminated an employee over the 2021 vaccination mandates, and didn't adequately provide alternatives.

Justice Argento awarded Duong Yee \$65,587.72, or the equivalent of 11 months of her salary. After more than 11 years of employment, she was terminated in the Fall of 2021, for refusing to take the injections. She had tried — but failed — to obtain an exemption on religious grounds.

Many lawsuits in recent years have *invoked* religious beliefs. However, this is a rarer one that actually *details* what those beliefs are. The case was pursued by Jody Wells and James Kitchen.

Yee didn't challenge the Government policy itself, but how it was implemented. While not a repudiation to the injection pass in general, this is nonetheless a nice win showing that some exemptions can be protected.

Although many have referred to this as suing WestJet, there were in fact 3 Defendants: (a) WestJet, an Alberta Partnership; and its Partners (b) Westjet Airlines; and (c) 2222304 Alberta Corp.

The lawsuit sought \$100,000 for economic and other harms:

- \$66,500 for severance pay
- \$12,000 for benefits
- \$21,500 for "moral damages" or aggravated damages
- Costs

While Yee did get an award for severance pay, and presumably the benefits lumped in, the request for damages was denied. The Judge said that none had been proven, and there was nothing overly insensitive or egregious in how the company had acted.

WestJet further argued that Yee failed to mitigate her damages (improve her own situation), but that was rejected by the Court.

Quotes From WestJet Exemption Questionnaire

Question #6. Explain why you are requesting an accommodation:

Based on sincerely held beliefs as a bible believing Christian, the vaccine is betrayal of faith to my healer, Lord and Saviour Jesus Christ.

Question #7. Describe the accommodation you are seeking:

Exemption from vaccination; from masks; from rapid testing

Question 9. Describe how you are a practicing member of this religion:

I attend online worship and sermons with my church, I have a weekly bible study with my church group to continue understanding God's word, as well as my own daily prayer, worship and bible readings to commune with my heavenly father.

Question #10. How long have you been a practicing member of this religion?

Over 3 years

Question #11. Explain the connection between your religious belief(s), your objection to receiving a COVID-19 vaccine and the accommodation you are seeking:

Jesus is my healer, I do not cannot rely on the use of vaccinations or medicines created artificially in order to prevent sickness. Jesus speaks of seeking out a doctor when one is sick, not well. I have no need of a vaccine in order to maintain my health.

Question #19. Do you belong to any groups (social media or otherwise) protesting or denouncing or being critical of Covid-19 measures taken by health authorities and government bodies?

Yes

Question #20. Please describe the groups of which you are a member:

I have joined groups that are peacefully seeking a community to support our freedoms; ie. conscience, religion, beliefs; choice – Jesus came to set the captives free and that we are not to live in bondage. This can be include those being critical of the covid measures, but that is not my purpose for belonging to these groups

Question #21. Do you have any concerns about the safety of any Health Canada-approved Covid-19 vaccines?

Yes, many reports of adverse reactions and death in the last 4 months of covid vaccines alone compared to last 17 years of all vaccines according to VAERS. -Severe reactions include: Inability to conceive, heart attacks, miscarriages, strokes; bloodclots, paralysis of arms and legs, reproductive dysfunction.- No long term safety has been completed to ensure they are safe and effective.-mRNA is a new technology and side effects completely unknown – Never

been licensed for human use when 0 long term studies have been completed [sic] to ensure they are safe and effective, they are still in phase 3 experiment that will not be completed until trial ends late 2022.

Interestingly, when WestJet asks a direct question about practical concerns people may have, this is used as “evidence” that their objection is a personal opinion, and not a protected ground.

WestJet has carefully reviewed your request for an accommodation, including the information listed above. For the reasons stated below, WestJet declines your request for an accommodation on the basis of religion:

- The information provided or obtained in reviewing your accommodation is insufficient to establish you require an accommodation. More specifically, the information you provided to WestJet casts doubt on religion being the grounds for your application. You have written in your application form that you consider the vaccine unsafe. ***It is therefore reasonable to consider that you are philosophically/personally opposed to mandatory vaccine, which means you are seeking accommodation for secular reasons, not religious.*** We respect your opinion, but personal preference is not a Protected Ground.

One has to wonder what kind of answer Yee was supposed to give. If she had no concerns about the shots, why wouldn't she have just taken them?

[Justice Argento Accepts Argument Termination Unnecessary.](#)

112. Even the Transport Canada regulations eased up as of the end of October 2021 where employees who could work at home were concerned. Moreover, they always contemplated and gave ample space for exemptions.⁸⁵

113. Of note, Mrs. Yee was an employee whose duties were eminently performable from home; she had, after all, been performing then from home for 6 months. Kerry Whyte testified that Mrs. Yee would have been able to continue performing her duties from home for at least another 3-4 months, as the return to the company offices was delayed into March of 2022.⁸⁶

114. Neither would reclassification of Mrs. Yee's position as a full-time, work-at-home position been impossible, according to the testimony of Lauren Sawchyn, who acknowledged the Respondent had already undertaken to create, and organize its prodigious staff into, six different classifications.⁸⁷

[101] First, the ***Plaintiff's conduct was not insubordination or disobedience of a type where the employment relationship could not continue and the misconduct was irreconcilable with continued employment.*** The Plaintiff continued working after her accommodation request was denied on October 4, 2021 until she was placed on unpaid leave on November 1, 2021. She continued to meet deadlines and her manager described her performance as "professional" leading up to November 1, 2021. There was ***no evidence that her non-compliance with the Vaccination Policy negatively impacted the workplace, other employees or the Defendant's trust in her ability to do her job.***

[102] The ***Plaintiff's refusal to comply with the Vaccination Policy did not impact her job performance. It did not endanger the Defendant's employees or the public as the Plaintiff was working from home.*** While a future, partial return to work was anticipated, that was not yet implemented. The issue of cause must be assessed based on what was known and understood at the time of dismissal.

[104] Next, in balancing the competing interests of the parties, it is significant that ***dismissal was not the only option available to the Defendant.*** Even though the Defendant's Vaccination Policy stipulated that anyone failing to comply would be subject to

discipline up to and including termination for cause, ***the Defendant did not have to proceed in this fashion.***

Aside from pleading the exemption issue, the Plaintiff pointed out that she had already been working remotely for several months. This presumably could continue.

Justice Argento comments that the decision to dismiss Yee was likely unnecessary in any event. This wasn't the sort of conduct that would destroy an employment relationship, nor was it one that would result in a lost of trust.

And most importantly, it wouldn't endanger anyone since Yee was working from home.

WestJet Plays Games With Issue Of Jurisdiction

11. While the Plaintiff references the words “wrongful dismissal” or “wrongful termination” ***the substance of her claim is entirely that of a human rights complaint based on allegations of discrimination***; the concept of wrongful termination itself is tied to WestJet's failure to accommodate the Plaintiff. ***The duty to accommodate is an obligation of employers enshrined in human rights legislation, and WestJet's purported failure to accommodate the Plaintiff is squarely in the purview of a human rights commission.*** The Civil Claim even seeks general damages for the duration of the reasonable notice period, which is ***a remedy only available to a human rights commission as compensation for the pain and suffering caused by discrimination.***

24. The Plaintiff further claims that WestJet ceded jurisdiction of this action to this Court. With all due respect, this is inaccurate. ***In response to the Plaintiff's Canadian Human Rights Complaint, and prior to the Civil Claim being filed, WestJet made a preliminary objection to the complaint on the basis that it would more appropriately be addressed under the Canada Labour Code by the Canadian Industrial Relations Board (“CIRB”).*** At no point has WestJet stated that this Court, or any civil court for that matter, has, or ought to have jurisdiction of a claim entirely based on an allegation of discrimination.

These passages are from the Defendants' written submissions. For context, it's important to realize the Yee filed a human rights complaint before suing anyone. WestJet objected, saying

it would be better placed before the Industrial Relations Board (CIRB) for Arbitration. The complaint was dropped.

WestJet *now* complains that this lawsuit *should* have been filed with the Human Rights Tribunal, raising a jurisdictional issue.

While the submissions say that the preferred venue is the CIRB, this is a bit of a red herring. WestJet initially objected to jurisdiction of the Human Rights Tribunal, so they can't really claim that it should be there after all.

The Defendants tried to argue that at its core, this wasn't a case about breach of contract or wrongful termination. It was about discrimination and failure to accommodate. It was unsuccessful.

Note: While WestJet is a unionized employer, not all employees and contractors are covered. Mrs. Yee wasn't, and hence, there was no duty to grieve and seek arbitration.

Timeline Of Major Events In Case

May 17th, 2010: Yee begins her employment with WestJet. At the time, she was working part time as a sales agent.

May, 2021: Yee comes back from maternity leave, and begins working remotely.

September 8th, 2021: WestJet announces their vaccination requirements.

September 20th, 2021: Yee requests a vaccine exemption.

October 4th, 2021: The request for an exemption is refused.

October 30th, 2021: The deadline imposed by WestJet for vaccination.

November 1st, 2021: Yee is placed on a month long unpaid suspension.

December 1st, 2021: Yee's employment is terminated by WestJet, and they claim it is "with cause".

August 15th, 2023: Yee sues WestJet in the Calgary Branch of the Alberta Court of Justice.

February 24th, 2025: Trial begins.

May 13th, 2025: Judgement is issued.

The Court declined to make an immediate decision on costs, allowing the parties the opportunity to settle them first. This may very well happen.

COURT DOCUMENTS:

- (1) Yee WestJet Statement Of Claim
- (2) Yee WestJet Plaintiffs Written Submissions
- (3) Yee WestJet Defendants Written Submissions
- (4) Yee WestJet Reasons For Decision
- (5) <https://www.canlii.org/en/ab/abcj/doc/2025/2025abcj87/2025abcj87.html>

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